No.

IN THE

Supreme Court of the United States

JIAN WANG. a/k/a JAMES WANG,

Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORP.,

Respondent,

On Petition For Writ Of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether $207,500 should be corrected to $207 million in the settlement term plus interest because effective and clear communication between attorneys and the petitioner who is Deaf were nonexistent without an American Sign Language interpreter in a civil proceeding.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jian Wang, a/k/a James Wang, respectfully petitions for a writ of certiorari to review all the orders of the United States Court of Appeals for the Second Circuit and the District Court for the Southern District of New York.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is available at appendix 1a, the opinion of the District Court for the Southern District of New York is also available at appendix 3a.

STATEMENT OF THE CASE

Petitioner brought suit against Respondent IBM ("Respondent") through an attorney alleging violations of Title I of the Americans with Disabilities Act of 1990, as codified 42 U.S.C. §§ 12101 et. seq. (amended by the Civil Rights Act of 1991, ("Title I" or "ADA") as well as the New York State Human Rights Law, N.Y. Exec. L. §§ 296 et. seq. ("NYCHRL"), and alleging unlawful termination from employment because Petitioner is Deaf.

Respondent moved for summary judgment, and the District Court for the Southern District of New York, by the Honorable Judge Vincent L. Bricetti, issued a Memorandum Order denying Respondent's motion for summary judgment and subsequent motion for reconsideration, upon grounds that Petitioner has sufficiently made out a prima facie case with evidence that his termination was for

legitimate reasons was pre-textual and that there was sufficient terminated for discriminatory reasons because Petitioner is Deaf.

Thereafter, the parties entered into negotiations to settle the action without going to trial.

FACTUAL AND PROCEDURAL BACKGROUND

In early 2011, Petitioner retained an attorney named Jonathan Bernstein, Esq., ("Bernstein"). He filed a complaint with the District Court against Respondent in the behalf of Petitioner. Mr. Bernstein only communicated with Petitioner in writing for all the time. Petitioner found later that Eisenerg & Baum, LLP ("firm") offers a Deaf-friendly environment with American Sign Language ("ASL") Interpreting service for clients who are Deaf. Petitioner decided to change attorney to that firm in late 2011. These attorneys at the firm communicated with Petitioner through an ASL interpreter and continued to represent Petitioner before the District Court.

In 2013, the firm hired an attorney named Andrew Rozynski, Esq., ("Rozynski") and eliminated adequate interpretation service because Mr. Rozynski knows ASL as a hearing child of deaf parents. Mr. Rozynski asked Petitioner how much he wanted to resolve his case on Video Phone. Petitioner indicated that he wanted $100 million in ASL after reading about a $137 million settlement in an unrelated sexual harassment case. At that time, Petitioner used ASL gesture for "million" – by tapping on an open palm twice. However, Mr.

Rozynski mistook the gesture for the sign for thousands – which includes tapping the palm once. Mr. Rozynski misunderstood "$100 million" for "$100,000".

Following the denial of Respondent's motion for summary judgment and subsequent motion for reconsideration, Mr. Rozynski informed Petitioner with such good news on Video Phone and wanted more money, directed Petitioner to increase $100 million to $300 million.

At the mediation session held at Respondent's law office on April 9, 2014, Petitioner saw an ASL interpreter was there and wanted to communicate with Mr. Rozynski through an ASL interpreter. But the interpreter said Mr. Rozysnki knows ASL, Petitioner can communicate with Mr. Rozynski directly. So Petitioner indicated to Mr. Rozynski that $300 million he wanted was too much, wanted to reduce it to $200 million. Petitioner accepted at least $200 million. Mr. Rozynski said OK. Mr. Rozynski negotiated with Respondent about the amount of settlement all day on the behalf of Petitioner.

At about 4:30 PM, the ASL interpreter left the session. Mr. Rozynski then told Petitioner in ASL that he finalized "207" with Respondent in the end of mediation at about 6 PM. A mediator double checked with Petitioner about the amount of settlement. Mr. Rozynski acted as a temporary ASL interpreter. Petitioner indicated to her that he was happy with $207 million through Mr. Rozynski. Mr. Rozynski misinterpreted $207 million for $207,000. The mediator then confirmed with Respondent that

Petitioner was happy with $207,000. Respondent unilaterally added $500 to $207,000 as a courtesy in the Memorandum of Understanding ("MOU"). Mr. Rozynski later gave Petitioner a MOU to read, but Petitioner did not read it. Mr. Rozynski signed that we got "207" in ASL and then signed "added $500 is better". Petitioner did not care of it as long as $207 million was good enough. Respondent was fully aware that Petitioner did not have access to ASL interpreter at mediation session all day. Mr. Rozynski signed the MOU out of Petitioner's presence.

Following the mediation, Petitioner reached out to a real estate broker to purchase a $3-8 million home in Los Angeles, California, purchased plane tickets to fly to Los Angeles, CA and rented a car because Petitioner plan to take about $10 million from the $207 millions of settlement in order to take care of his children there and send his children to private school for better education and financially support them to learn new skills such as swimming and karate after school.

When Mr. Rozynski emailed a copy of the settlement agreement and release to Petitioner for review and sign almost a full month after the mediation, Petitioner was shocked to learn the case had settled for $207,500, rather than $207 million, and Petitioner refused to sign the proposed agreement and release, wanted to go to trial.

Respondent moved to enforce the settlement agreement and Mr. Rozynski moved to withdraw as Petitioner's counsel. The District Court granted both motions.

At that time, Petitioner was unable to find a "deaf-friendly" attorney who would take his case on a contingency basis for about six months, so Petitioner was proceeding pro se. On October 7, 2014, Memorandum Decision granting Respondent's motion to enforce the settlement, the District Court directed Respondent to submit a proposed judgment and permitted Petitioner to submit a counter-proposed judgment.

I received Respondent's Proposed Judgment and misunderstood that Counter-Proposed Judgment meant to "oppose" the Respondent's "Proposed Judgment". So Petitioner timely submitted Counter-Proposed Judgment to reject the MOU.

The District Court entered Judgment on October 22, 2014. The same day, the District Court construed Petitioner's counter-proposed judgment as a motion for reconsideration of the Court's decision granting the motion to enforce and denied it. Petitioner was shocked and learned that Counter-Proposed Judgment in legal term is in fact a motion for reconsideration. Petitioner resubmitted "correct" version of or second Counter-Proposed Judgment with key evidence to the District Court by Certified Mail and the document was never placed on the District Court's ECF docket for some reason.

On November 4 2014, Petitioner appealed the judgment of the District Court to United States Appeals Court for the Second Circuit, case no. 14-4183-cv.

After a notice of appeal was filed, Petitioner continued to look for potential attorneys who would represent him before the Second Circuit. In the early December 2014, a retired attorney named Harvey Baum ("Baum") emailed Petitioner that he reviewed documents in PACER about his case and told Petitioner that Mr. Rozynski did not have his authority to settle with IBM for $207,500, and would like to schedule a face-to-face meeting with Petitioner for December 18, 2014 and he would introduce another an active attorney named Peter Hurwitz, Esq., ("Hurwitz") to the meeting.

On or about December 18, 2014, Mr. Baum and Mr. Hurwitz both attended the meeting in Starbucks store, Newburgh, NY, both attorneys failed to provide an ASL interpreter for the face-to-face meeting. These attorneys and Petitioner made brief communication in written form only. Mr. Baum and Mr. Hurwitz discussed a lot each other in verbal language for about 15 minutes. Petitioner was unable to hear what they talked about due to hearing disability. After their discussion, Mr. Baum told Petitioner that they both agreed that Mr. Rozynski did not have his authority to settle with IBM for $207,500, which Petitioner agreed with. Mr. Hurwitz then talked to Petitioner that he would like to take his case and take care of all documents in PACER for an appeal because he did not represent Petitioner in the District Court.

On or about February 25, 2016, Mr. Hurwitz emailed Petitioner with the decision of the Second Circuit that the Second Circuit affirmed on the grounds that Mr. Rozynski had actual authority to settle the case, noting that his statement regarding

his belief that the parties had agreed to settle the case for $207 million was implausible, and insufficient to warrant reversal.

Mr. Hurwitz disagreed with the Court's conductions. Petitioner reviewed the Second Circuit's opinions. It was unclear to Petitioner. Mr. Hurwitz advised Petitioner to "be a writ of certiorari to the U.S. Supreme Court based upon a constitutional issue of denial of equal protections of the law since you were disadvantaged because of your hearing disability. A point the court recognized in a footnote but said it did not change the outcome to you". Petitioner agreed with him that they seek a writ before the U.S. Supreme Court. He took care of a writ on the behalf of Petitioner for the United States Supreme Court. Case No. 16-561.

On or about January 9, 2017, the U. S. Supreme Court denied the petition for the Writ about the right of a Deaf person to have a proper interpreter for effective communication in a civil lawsuit. Mr. Hurwitz advised Petitioner to find a lawyer who specialize in legal malpractice and file complaint against Mr. Rozynski and his firm for legal malpractice.

Petitioner called New York State Bar Association to find an attorney. Petitioner was advised to file a complaint with Attorney Grievance Committees, which Petitioner did. Docket No. 2017.0220. Attorney Grievance Committees have concluded that no further investigation dated April 14, 2017.

On or About February 14, 2017, Petitioner filed a complaint with the same District Court against Mr. Rozynski and his firm for legal malpractice. Case No. 17-CV-1107 (KMK).

About April 10, 2017, the complaint was dismissed without prejudice by the District Court for lack of subject matter jurisdiction over this case. Petitioner was advised that the decision does not in any way affect his ability to file his claim in state court, where legal malpractice claims may be heard.

On or about April 18, 2017, Petitioner filed a complaint with the New York State Supreme Court of New York County against Mr. Rozynski and his firm for legal malpractice. Case No. 100481/2017.

Honorable Judge Bluth scheduled an oral argument for December 12, 2017 and provided an ASL interpreter for the oral argument. Mr. Rozynski's attorney named Robert Bergson, Esq., ("Bergson") and Petitioner appeared in the court room. Petitioner had an opportunity to clarify more facts before the Judge in response to statements raised by Mr. Bergson.

On January 3, 2018, Judge Bluth issues the court's decision and she addresses "Simply put, the federal courts did not believe plaintiff's claim that there was a misunderstanding over how much money plaintiff would take to settle the case They did not believe that plaintiff actually thought IBM would settle for an amount more than 3,000 times greater than plaintiff's annual salary when he was terminated". Petitioner was shocked for the first time and realized that the federal courts must have

overlooked second Counter-Proposed Judgment with key evidence and essentially misunderstood Petitioner.

On January 28 2018, Petitioner appealed the dismissal of malpractice lawsuit to the Appellate Division, First Department and provided more relevant evidence to First Department to support second Counter-Proposed Judgment Petitioner resubmitted to the District Court in 2014. On October 23, 2018, the First Department affirmed the state Supreme Court's ruling. Petitioner subsequently requested permission to either reargue his case before the First Depart or for leave to appeal to the New York Court of Appels. The First Department denied his request on January 15, 2019. Petitioner subsequently file a "Motion to Renew" his malpractice claim before Justice Bluth which she denied on May 24, 2019. In her order, Justice Bluth wrote that:

> The new fact that Plaintiff could not find a "deaf-friendly" attorney who would take his case on a contingency basis was known to Plaintiff at the time of the original motion before this Court. In any event, had that information been presented at the time of the original motion, this Court would have made the same decision.

In June 2019, Petitioner was shocked to discover that the alleged second Counter-Proposed Judgment with key evidence did not appear on the public docket after an email exchanged with Mr.

Hurwitz who represented him before the Second Circuit in 2016.

The Clerk's Office of the District Court referred Petitioner to meet an attorney at New York Legal Assistance Group ("NYLAG") for legal assistance. NYLAG does not provide an ASL interpreter for Petitioner. Attorneys at NYLAG communicated with Petitioner in writing only. Petitioner submitted a motion to reopen with attached a copy of second Counter-Proposed Judgment to the District Court in 2019 under Fed. R. Civ. P. 60 based on the legal advice of NYLAG and Petitioner argued that if the District Court knew that Petitioner was planning to use the settlement proceeds to purchase several multi-million-dollar homes, the District Court would have concluded that Petitioner could not have authorized Mr. Rozynski to settle the case for $207,500 and reversed its decision on IBM's motion to enforce the settlement.

The District Court issued Court's Opinion and Order to deny Motion to Reopen as time-barred or meritless under Fed. R. Civ. P. 60, dated October 28, 2019. Petitioner moved for reconsiderations, which the District Court Summarily denied. So Petitioner timely appealed again. Case No. 19-3851-CV.

After reviewing the written submission and hearing oral argument, the U. S. Appeals Court for the Second Circuit affirmed again the orders of the District Court on January 27, 2021. Specifically, the Court stated that "the fact that Mr. Wang claims that he originally filed his second counter-proposed judgment in 2014 is irrelevant because the filing

subject to the one-year limitations period is the current motion."

On April 21, 2021, two weeks after the Second Circuit denied Petitioner's second appeal, the Petitioner filed a "Motion to Reopen and Cure Defective" in the District Court. On May 10, 2021, the District Court denied the request.

On May 11, 2021, the following day, the Petitioner filed a submission labelled as a "reply" and the District Court reviewed the "reply" and determined that it would not change its ruling.

On May 19, 2021, the Petitioner filed another motion, entitled "Motion to Clarify Fact,", seeking to vacate the 2014 judgment enforcing the settlement. The District Court denied that motion the following day, May 20, 2021, holding that the motion was frivolous. In its order, the District Court imposed a filing restriction, ordering that the Petitioner was prohibited from filing further papers without first submitting a letter to the District Court seeking permission to do so. The District Court again warned the Petitioner that monetary sanctions would follow if Petitioner continued to file frivolous motions.

The Petitioner thereafter filed four more letter requests from May to July 2021, all of which were denied.

On June 25, 2021, the Petitioner wrote to the District Court's Clerk's Office, asking them to locate the original copy of second counter-proposed judgment filed in 2014 but not docketed according to the legal advice of NYLAG again. On July 13, 2021,

the Petitioner wrote another letter to the Clerk's Office substantially identical to the first letter. In response to those letters, the District Court undertook a review of its records and located the document, entitled "Counter Proposed Judgment (Correct Version)," dated October 31, 2014, and docketed the letter.

The District Court construed the Petitioner's June 25 and July 13, 2021 letters as a renewed motion seeking relief from a final judgment under Rule 60(b)(2) and denied it. Specifically, the District Court states that Petitioner did not understand that the case was closed and judgment of District Court was final.

Third appeal followed, case no. 21-1897. The Second Circuit ruled to affirm again the Order of the District Court on February 3, 2022 with vague texts.

Petition for a Writ of Certiorari followed. It was placed on the dockets June 6, 2022 as No. 21-1529. U.S. Supreme Court denied the Petition again.

Petitioner wrote multiple letters to the District Court and talked to National Association of the Deaf ("NAD") later to learn about Americans with Disabilities Act related to the right of deaf people and realized that attorneys or law offices are considered places of public accommodation under Title III of the ADA. Petitioner wrote a letter to the District Court to correct previous mistakes and raised new legal argument that Petitioner should file a Motion to reopen his case under Title III of the ADA against a public accommodation. Attorneys (law offices) are considered places of public

accommodation. His former attorney and the attorneys for the Respondent both failed to provide a professional ASL interpreter for the mediation session held in the Respondent's law office in early 2014, Petitioner did not have access to ASL interpreter and his former attorney acted a temporary ASL interpreter and he misunderstood $207 million in ASL for "$207,000" and the Respondent then unilaterally added a "500" to $207,000 as a courtesy in the term of settlement agreement. Petitioner refused to sign up the settlement. His former attorney moved to withdraw as his counsel. His second attorney then failed to provide an ASL interpreter again for a face-to-face meeting and decided to take his case based on the input of another retired attorney who viewed documents on the public dockets without effective communication with Petitioner in late 2014 and his attorney made a misrepresentation of Petitioner before the Second Circuit and this Court that caused Petitioner accept $207,500 because effective communication with his attorney was nonexistent as well without ASL interpreting service. It was docketed on the public docket as doc#150.

The District Court issued an Order (3a) directed Petitioner stop any further submission on January 27, 2023. Petitioner was waiting for the District Court to make a ruling on Doc#150 someday. However, Petitioner never hear the decision of the District Court regarding to Doc#150 for almost one year. Petitioner wrote a letter to the District Court and requested to correct the settlement term.

The District Court received it on January 18, 2024 and the letter was returned to Petitioner with a

copy of same Court's order (3a). Petitioner realized that the District Court was not intended to make a ruling on Doc#150.

Petitioner appealed it again to the Second Circuit. Case No. 24-243.

The Petitioner was seeking to correct $207,500 to $207 million in the term of settlement. The Second Circuit dismissed the appeal for lack of jurisdiction and Appellee's and Appellant's motions are denied on April 25, 2024. (1a)

Petition for a Writ of Certiorari followed again.

REASONS FOR GRANTING THE WRIT

THE CASE REPRESENTS AN EXCEPTIONALLY IMPORTANT QUESTION THAT SHOULD BE REVIEWED WHETHER $207,500 SHOULD BE CORRECTED TO $207 MILLION IN THE SETTLEMENT TERM PLUS INTEREST BECAUSE ATTORNEYS FOR PETITIONER AND RESPONDENT BOTH FAILED TO PROVIDE A PROFESSIONAL AMERICAN SIGN LANGUAGE INTERPRETER FOR PETITIONER AT MEDIATION, ATTORNEY FOR PETITIONER ACTED AS A TEMPORARY INTERPRETER, HE MISINTERPRETED $207 MILLION FOR $207,000. RESPONDENT UNILATERALLY ADDED $500 TO $207,000 AS A COURTESY IN THE TERM OF SETTLEMENT. ATTORNEYS SIGNED THE SETTLEMENT OUT OF PETITIONER'S PRESENCE, PETITIONER REFUSED TO SIGN THE SETTLEMENT,

WANTED GO TO TRIAL. RESPONDENT MOVED TO ENFORCE THE SETTLEMENT AND ATTORNEY FOR PETITIONER MOVED TO WITHDRAW AS HIS COUNSEL OVER THE WRONG AMOUNT OF SETTLEMENT. SECOND ATTORNEY FOR PETITIONER THEN FAILED TO PROVIDE AN ASL INTERPRETER FOR A FACE-TO-FACE MEETING AND DECIDED TO TAKE HIS CASE BASED ON THE INPUT OF ANOTHER RETIRED ATTORNEY WHO VIEWED DOCUMENTS ON PUBLIC DOCKET WITHOUT EFFECTIVE COMMUNICATION WITH PETITIONER AND THEN MADE A MISREPRESENTATION OF PETITIONER BEFORE THE SECOND CIRCUIT AND THIS COURT THAT CAUSED PETITIONER TO ACCEPT $207,500, BECAUSE EFFECTIVE COMMUNICATION BETWEEN ATTORNEYS AND PETITIONER WERE NONEXISTENT WITHOUT AN AMERICAN SIGN LANGUAGE INTERPRETER.

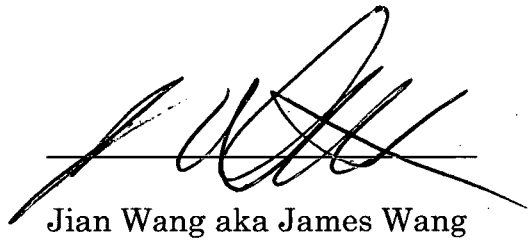
The District Court states "Plaintiff has been deaf since childhood. He communicates primarily in American Sign Language ("ASL") and needs an ASL interpreter to communicate face-to-face with non-deaf people. He cannot communicate effectively through lip=reading or speaking."

CONCLUSION

The petition for a Writ of Certiorari should respectfully be granted for the reasons stated herein, that Petitioner did not have equal access to American Sign Language Interpreting service in a

civil proceeding as attorneys are considered places of public accommodation, so $207,500 shall be corrected to $207 million as a term of settlement plus interest, $207,500 Petitioner received shall be applied to the amount of the settlement.

Dated: June 26, 2024



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